No. 83-414
IN THE SUPREME COURT OF THE UNITED STATES
FALL TERM, NINETEEN HUNDRED AND EIGHTY-THREE

CHARLES D. GRIGGS,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

vs. Case No. 80-13-Cr-J-B

CHARLES D. GRIGGS

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

This cause is before the Court on defendant's Motion to Dismiss with Prejudice, filed herein on June 25, 1980. The instant case was stayed pending resolution of an interlocutory appeal in a related case, United States v. Griggs, Case No. 79-13-Cr-J-M, by order of the Court dated October 17, 1980. Due to the protracted and intertwined history of this and two related cases, the Court will begin its opinion with a chronological statement of the facts.

INTRODUCTION

Defendant herein has been charged with violation of 18 U.S.C. § 1623, false declarations before a jury or court. The alleged perjury occurred during the trial of United States v. Griggs, Case No. 79-49-Cr-J-M (hereinafter "the first case"). The first case involved an alleged violation of 18 U.S.C. § 472, uttering counterfeit obligations or securities. Defendant was acquitted on all three counts of that indictment. Subsequently, defendant was indicted for alleged violation of 18 U.S.C. §§ 371, 472, & 473 (conspiracy to commit offense, uttering counterfeit obligations or securities, and dealing in counterfeit obligations or securities, respectively), in United States v. Griggs, Case No. 79-138-Cr-J-M (hereinafter "the second case"). Defendant filed a Motion to Dismiss the

indictment in the second case on the basis of collateral estoppel, arguing that certain issues presented therein had been previously determined by his acquittal in the first case. Defendant's Motion to Dismiss was denied, whereupon he appealed to the Fifth Circuit Court of Appeals. In the meantime, a third (perjury) indictment was returned, and defendant filed the instant Motion to Dismiss, which is also based upon collateral estoppel. Because certain issues presented in this motion are identical to issues presented in the previous motion, disposition of the instant case was stayed, at the request of defendant, pending resolution of the appeal. See Defendant's Response to Government's Supplement to Memorandum in Opposition to Defendant's Motion to

Suppress [sic] at 2 (filed August 29, 1980).[1] As noted previously, the mandate in the second case has now been returned, and the Court is now able to proceed with the resolution of this matter.

THE FIRST CASE

The indictment in the first case charged defendant with three counts of passing and uttering counterfeit money in violation of 18 U.S.C. § 472. Count I alleged that on April 20, 1979, defendant, with intent to defraud, passed and uttered to employees of Twelve North Restaurant, Jacksonville, Florida, five forged and counterfeited federal reserve notes in fifty dollar ($50) denominations.

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[1] This case was continued previously, also upon defendant's request, for similar reasons. See defendant's Motion for Continuance (filed July 2, 1980).

Count II alleged that on April 20, 1979, defendant, with intent to defraud, passed and uttered to an employee of Page One Lounge, Jacksonville, Florida, one forged and counterfeited federal reserve note in the denomination of fifty dollars ($50). Count III alleged that on April 20, 1979, defendant, with intent to defraud, passed and uttered to another employee of Page One Lounge, Jacksonville, Florida, one forged and counterfeited federal reserve note in the denomination of fifty dollars ($50). Defendant entered a not guilty plea to each of the three counts and a jury trial ensued. At the close of the evidence, the court granted defendant's motion for directed verdict as to Count III. The jury returned a verdict of not guilty as to the remaining two counts.

THE SECOND CASE

The indictment returned in the second case charged defendant in five separate counts. Count I charged defendant with conspiracy to publish, pass, sell, and deliver counterfeit fifty dollar ($50) federal reserve notes, alleging 13 overt acts performed by defendant between April 1, 1979, and August 17, 1979, in furtherance of the conspiracy. Counts II and III alleged that on April 6 and 17, 1979, defendant sold, transferred, and delivered to one Federick Kirschwing 20 counterfeit fifty dollar ($50) federal reserve notes. Count IV alleged that on April 6, 1979, defendant possessed an unknown quantity of counterfeit federal reserve notes in twenty (20), fifty (50), and one hundred (100) dollar denominations. Count V alleged that on April 20, 1979,

defendant attempted to pass and utter to one Barbara Rhodes at the Page One Lounge in Jacksonville, Florida, one counterfeit fifty dollar ($50) federal reserve note, knowing it to be counterfeit, and with intent to defraud.

Defendant moved the court in the second case to dismiss the indictment on the ground that the government was collaterally estopped from relitigating the essential facts of that case, arguing that those facts had been previously determined in his favor by virtue of his acquittal of counterfeiting charges in the first case. The court denied defendant's motion in toto, whereupon defendant filed his appeal.

THE APPEAL

The appellate court agreed with the trial court's determination that the

crimes alleged in Counts I through IV of the indictment in the second case were not barred by application of the doctrine of collateral estoppel. United States v. Griggs, 651 F.2d 396, 399-400 (5th Cir. 1981). The court noted that those four counts alleged crimes which were distinctly different in nature from the passing and uttering charges of which defendant was acquitted, in that they were alleged to have occurred on different dates and at different times than those charged in the previous indictment. Id. at 399. However, the appellate court disagreed with the trial court's determination that the crime alleged in Count V of the indictment in the second case was not barred by application of the doctrine of collateral estoppel. Id. at 400. As noted previously, Count V charged a completed pass to Barbara Rhodes, an employee of

Page One Lounge, on the evening of April 20, 1981. The appellate court held that prosecution of Count V of the second case was barred by the jury's acquittal of defendant as to Count I of the first case. The appellate court found that defendant's acquittal on Count I of the first indictment, which charged that on April 20, 1979, defendant, with intent to defraud, passed and uttered to employees of Twelve North Restaurant five forged and counterfeited federal reserve notes in fifty dollar ($50) denominations, established that defendant had no knowledge that the counterfeit bills which he pased at Twelve North Restaurant were counterfeit. Id. at 399.

The appellate court reasoned that although the incidents alleged in Count I of the first indictment and Count V of the second indictment constituted

separate transactions involving different crimes and different bills, occurring at different times and places, "the events which transpired on the evening of April 20 [were] so intimately related that if the defendant lacked knowledge that the bills were counterfeit in the Twelve North Restaurant, he also lacked knowledge that a fifty dollar bill in his possession which he attempted to pass in the Page One Lounge was counterfeit." Id. at 400. Thus, prosecution of Count V of the second indictment was barred by defendant's acquittal as to Count I of the first indictment.

THE INSTANT CASE

The instant indictment charges defendant in six counts with violation of 18 U.S.C. § 1623, false declarations before a jury or court. Count IV of the

indictment was dismissed by order of the Court dated June 19, 1980. Count I charges that on June 27, 1979, defendant falsely testified that he did not provide counterfeit bills to one Frederick Kirschwing and that he did not attempt to pass a torn counterfeit fifty dollar ($50) bill at the Page One Lounge on April 20, 1979. Count II charges that on June 27, 1975 [sic], defendant falsely testified that after his arrest on counterfeit charges, he did not go to see Frederick Kirschwing at a fish camp and cabin near the St. Johns River. Count III charges that on June 27, 1979, defendant falsely testified that he did not advise Frederick Kirschwing and Howard Kinsey before April 26, 1979, that he had heard that authorities were looking for him and perhaps them in connection with counterfeit money and that he did not advise them what to do. Count V

alleges that on June 27, 1979, defendant falsely testified that he did not know, prior to his arrest on April 26, 1979, that he had been with Frederick Kirschwing and Howard Kinsey on the evening of April 20, 1979. Count VI charges that on June 27, 1979, defendant falsely testified that he was involved in a game of "liars' poker" on the afternoon and evening of April 20, 1979. Defendant now seeks dismissal of all counts of the indictment on the grounds of collateral estoppel.

THE COLLATERAL ESTOPPEL ARGUMENT AS APPLIED TO THE INSTANT CASE

A. Count I

In light of the fifth circuit's determination of the appeal in the second case, it would appear that this Court is required to hold that prosecution of Count I in the instant case is barred by the

doctrine of collateral estoppel. Indeed, Count I presents an issue which is nearly identical to that discussed in the appellate opinion. Count I charges that defendant perjured himself when he testified that he did not know that the bills which he passed at the Page One Lounge on April 20, 1979, were counterfeit. However, the fifth circuit has determined that because the jury determined that defendant lacked knowledge of the counterfeit nature of the bills which he passed at Twelve North Restaurant on the same evening, and because the events which transpired on the evening of April 20, 1979, were so "intimately related," if defendant lacked knowlege that the bills were counterfeit in the Twelve North Restaurant, he also lacked knowledge that the fifty dollar ($50) bill which he attempted to pass in the Page One

Lounge was counterfeit. Obviously, if defendant cannot now be prosecuted for violation of 18 U.S.C. § 472 in connection with the incident at Page One Lounge based upon a jury determination that he lacked knowldege of the counterfeit nature of the bills, he cannot now be prosecuted for perjury in connection with his testimony that he lacked knowledge of the counterfeit nature of the bills. Therefore, prosecution of defendant under Count I of the instant indictment is barred by application of the doctrine of collateral estoppel. Accordingly, Count I will be dismissed.

B. Counts II, III, V, VI

Defendant argues that the remaining counts of the instant indictment should be dismissed based upon his acquittal in the first case. Defendant argues that

"[t]he underlying issue . . . during the trial, whether the jury believed the testimony of defendant," and that the government is now precluded from challenging the truthfulness of defendant's testimony. However, the jury's acquittal of defendant cannot be taken as an indication that they believed his testimony in toto. As noted by Judge Melton in his Opinion on the first Motion to Dismiss, a review of the record reveals that defendant's defense was multifaceted, including lack of knowledge, intoxication, and mistaken identity. Thus, the jury's verdict could have been based upon a belief in the truthfulness of some, but not all, of defendant's testimony.

Ashe v. Swenson, 397 U.S. 436 (1970), the landmark case on the doctrine of collateral estoppel, held that when an

issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. As a corollary to that holding, the court stated that where a previous judgment of acquittal was based upon a general verdict, the federal rule of collateral estoppel requires the court to examine the record of the prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and to conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. In accordance with the dictates of Ashe, this Court has carefully examined the record of the first case, paying particular attention to defendant's testimony. It is readily apparent that the jury's

verdict could have been based upon belief in the credibility of any one of a number of the exculpatory segments of his testimony.

The Court particularly notes the fact that all of the remaining counts of the instant indictment deal with actions and events occurring at times other than the evening of April 20, 1979, which is the date upon which defendant was alleged to have passed the counterfeit bills. Defendant is now charged with commission of an entirely different offense with respect to these actions and events. Although relevant to the previous charges of uttering counterfeit obligations or securities, the instant charges of perjury are by no means identical offenses. Therefore, they cannot be held to be barred by application of the doctrine of collateral estoppel. Accordingly, it is

ORDERED AND ADJUDGED:

1. That defendant's Motion to Dismiss with Prejudice, filed herein on June 25, 1980, is granted as to Count I of the indictment, but is denied as to Counts II, III, V, and VI.

2. That Count I of the indictment is hereby dismissed with prejudice.

DONE AND ORDERED at Jacksonville, Florida, this 13 day of November, 1981.

/s/ Susan H. Black
UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record

Respectfully submitted,

H. JAY STEVENS
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By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing has been furnised to the Solicitor General, Room 5143, Main Justice Bldg., 10th & Constitution Avenue, N.W., Washington, D. C. 20530, by mail, this 21st day of ~~September~~ October, 1983.

_____
Assistant Federal Public Defender